ESTTA Tracking number: **ESTTA1025787**

Filing date: **12/30/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237315
Party	Defendant Universal Life Church Monastery Storehouse, Inc.
Correspondence Address	MICHAEL P MATESKY II MATESKY LAW PLLC 1001 4TH AVE, SUITE 3200 SEATTLE, WA 98154 UNITED STATES trademarks@mateskylaw.com, mike@mateskylaw.com 206-701-0331
Submission	Motion to Strike
Filer's Name	Michael P. Matesky, II
Filer's email	mike@mateskylaw.com, trademarks@mateskylaw.com, litiga-tion@mateskylaw.com
Signature	/Michael P. Matesky, II/
Date	12/30/2019
Attachments	Mot. Strike Reply 123019.pdf(15386 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE MINISTRIES, Opposer, v. UNIVERSAL LIFE CHURCH MONASTERY STOREHOUSE, Applicant.	Opposition No. 91237315 MOTION TO STRIKE OR DISREGARD NEW MATERIAL SUBMITTED IN REPLY

Pursuant to 37 C.F.R. § 2.127(a) and T.B.M.P. § 517, Applicant Universal Life Church Monastery Storehouse ("Applicant") moves the Board to strike or disregard new evidence and arguments submitted by Opposer American Marriage Ministry ("AMM") for the first time in reply to Applicant's Opposition to Opposer's Motion for Partial Summary Judgment ("Opposition").[1]

A motion submitted to the Board "shall contain a full statement of the grounds" for the relief it seeks. 37 C.F.R. § 2.127(a). "If a brief in opposition to a motion, or a reply brief in support of the motion, is not timely filed, it may be stricken, or given no consideration, by the Board." T.B.M.B. § 517 (citing *Consolidated Foods Corp. v. Berkshire Handkerchief Co., Inc.*, 229 U.S.P.Q. 619, 620 (T.T.A.B. 1986)). Similarly, "any portions of the brief that are found by the Board to be improper will be disregarded." T.B.M.P. § 517.

1 Because the Board will not consider sur-reply briefs, Applicant does not address the merits of

The Board has held that new arguments and evidence submitted for the first time with a reply brief are "untimely" and "improper" and should be disregarded. *See In re Change Wind Corp.,* 123 U.S.P.Q.2d 1453, 1455 n.3 (T.T.A.B. 2017) (citing *In re Zanova Inc.*, 59 U.S.P.Q.2d 1300, 1302 (T.T.A.B. 2001)); *Productos Lacteos Tocumbo S.A. de C.V. v. Paleteria La Michoacana Inc.*, 98 U.S.P.Q.2d 1921, 1928 (T.T.A.B. 2011) (citing *Kohler Co. v. Baldwin Hardware Corp.*, 82 U.S.P.Q.2d 1100, 1104 (T.T.A.B. 2007); *Citadel Fed. Credit Union v. KCG IP Holdings LLC*, No. 92055228, at 3 (T.T.A.B. July 10, 2013) (non-precedential) (disregarding argument raised for first time in a reply brief supporting a motion for summary judgment as "improper rebuttal").

AMM submitted both new evidence and new argument for the first time in reply to Applicant's Opposition. First, AMM submitted The Declaration of Dylan Wall in Support of Opposer's Reply to Applicant's Opposition to Opposer's Motion for Partial Summary Judgment ("Wall Declaration") and 21 exhibits attached thereto (Dkt. No. 33). This evidence was not submitted in support of AMM's Motion for Partial Summary Judgment (Dkt. No. 21), thus depriving Applicant of an opportunity to address the merits of such evidence.

Second, AMM argued for the first time in its Reply that Applicant is foreclosed from demonstrating that the GET ORDAINED mark has acquired secondary meaning. (Reply, Dkt. No. 32, at pp. 9-10). In its opening brief, AMM argued directly that the GET ORDAINED mark had not developed secondary meaning. (Mot. Part. Summ. J., Dkt. No. 21, at 6-7.) More specifically, AMM argued that the GET ORDAINED mark was unprotectable because it "has developed no secondary meaning" and that "no admissible evidence suggests a secondary

---

AMM's Reply.

meaning has developed." (*Id.*) Despite raising the issue of secondary meaning head-on, AMM did not argue in its opening brief that Applicant is foreclosed from demonstrating secondary meaning. (*See id.*) Rather, AMM held that particular argument in reserve until it submitted its Reply, thereby depriving Applicant of an opportunity to address the merits of the argument. This constitutes "improper rebuttal." *See, e.g.*, *Citadel*, No. 92055228, at 3.

Accordingly, consistent with 37 C.F.R. § 2.127(a), T.B.M.P. § 517, and Board practice and precedent, Applicant requests that the Board strike or otherwise disregard the Wall Declaration and exhibits thereto, and AMM's contention that Applicant is foreclosed from demonstrating that the GET ORDAINED mark has acquired secondary meaning.

DATED: December 30, 2019

Respectfully submitted:

MATESKY LAW^{PLLC}

s/ Michael P. Matesky, II/

Michael P. Matesky, II
(Washington Bar No. 39586)
1001 4th Ave., Suite 3200
Seattle, WA 98154
Ph: 206.701.0331
Fax: 206.702.0332
Email: mike@mateskylaw.com;
litigation@mateskylaw.com

Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on Opposer's counsel of record by email transmission to nancy.stephens@foster.com, pursuant to Trademark Rule § 2.119(b), 37 C.F.R. § 2.119(b).

Dated: December 30, 2019

s/ Michael P. Matesky, II
Michael P. Matesky, II